

111985

LAW OFFICES

HAWS & BURKE

A PROFESSIONAL CORPORATION

15 RITTENHOUSE PLACE

ARDMORE, PA. 19003

(215) 649-5200

FAX (215) 649-7648

THOMAS J. BURKE, SR.
THOMAS P. DELANEY
THOMAS J. BURKE, JR.
DANIEL S. COVAL, JR.
DAVID T. SCOTT
ROBERT E. DELANEY
CHRISTOPHER GATTI

H. LESTER HAWS
1927-1988

RALPH L. ROSE
OF COUNSEL

FACSIMILE TRANSMISSION REQUEST

SENT TO: Mary Ruzala, Esq. 597-3235
FROM: Tom Delaney
REFERENCE: Lagore Estate Property
DATE: 9-27 TOTAL PAGES INCLUDING COVER PAGE: 4
SPECIAL INSTRUCTIONS: Faxed & Mailed

IF THERE IS ANY PROBLEM IN RECEIVING THIS TRANSMITTAL, PLEASE CALL
(215) 649-5200.

THE INFORMATION CONTAINED IN THIS TELEFACSIMILE MESSAGE IS
TRANSMITTED BY AN ATTORNEY. IT IS PRIVILEGED AND CONFIDENTIAL,
INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE.
IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU
ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPY OF
THIS COMMUNICATION IS STRICTLY PROHIBITED. IF THIS COMMUNICATION
HAS BEEN RECEIVED IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY
TELEPHONE, COLLECT IF NECESSARY, AND RETURN THE ORIGINAL MESSAGE TO
US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE (WE WILL
REIMBURSE POSTAGE). THANK YOU.

AR000069

LAW OFFICES

HAWS & BURKE

A PROFESSIONAL CORPORATION

15 RITTENHOUSE PLACE

ARDMORE, PA. 19003

(215) 849-5200

FAX (215) 849-7648

H. LESTER HAWS

1927-1988

CHRISTOPHER J. MURRAY, CPA
TAX CONSULTANT

THOMAS J. BURKE, SR.
THOMAS F. DELANEY
THOMAS J. BURKE, JR.
DANIEL S. COVAL, JR.
DAVID T. SCOTT
ROBERT E. DELANEY
CHRISTOPHER GATTI

September 23, 1993

Mr. Joseph J. C. Donovan
Chief, Circular Removal Section 2
United States Environmental Protection Agency
Region 3
841 Chestnut Building
Philadelphia, PA 19107-4431

IN RE: Rogers Estate Property, Havertown, PA
Our Ref: 86-433

Dear Mr. Donovan:

I reviewed the "Administrative Order for Access on Consent" which you forwarded with the executors of the Estate of Clifford Rogers. After lengthy discussions we have determined that the Estate cannot execute the Order without substantial revisions being made. The primary concerns of the executors are these:

- a) The Estate does not admit to any liability for alleged contamination of the property. While I understand that CERCLA imposes strict liability upon certain classes of entities, including owners of contaminated property, the Estate does not admit to any wrongdoing or liability. The Estate cannot stipulate to alleged facts of which the executors do not have personal knowledge, including any activities by National Wood Preservers or any other entity. Nor can the Estate stipulate to the findings of studies and investigations conducted on the site, particularly as to the existence of contamination. Similarly, the Estate cannot stipulate to conclusions of law which would establish liability under CERCLA.
- b) Nothing in the Order can state or imply that Clifford Rogers or his executors took part in, were aware of, or condoned the alleged discharge of hazardous substances upon the property. Nothing in the Order should be construed as an admission on behalf of the Estate of the Executors that it or they had the authority to prevent or control the release or threatened release of hazardous substances, or had any role in the operation of the

AR000070

National Wood Preservers business.

- c) On the Estate property there are two businesses, Young's Produce Market and Swiss Farms Convenience Store. These two facilities are located along Lawrence and Eagle Roads and not within the area used by National Wood Preservers for its operations. It is important that the operation of these businesses not be disturbed. Therefore, the access agreement must be limited to the present fenced area and not the area immediately contiguous to those businesses. No testing or other activities may be conducted on the Rogers Estate property outside of the fenced area without the consent of the Estate.
- d) The Estate will not stipulate to the assessment of penalties. It will not waive its right to due process of law upon alleged violation of the Order or applicable law.
- e) The Estate will not be liable for any loss, damage or injury arising out of the activities of EPA upon the property. The EPA shall indemnify and hold the Estate harmless for any loss, damage or injury arising out of such activities. This indemnification shall extend to the EPA, its agents, servants, employees and contractors. The Estate also shall not be liable for the unauthorized and/or criminal actions of third parties which give rise to loss, damage or injury.
- f) The Estate will not give blanket permission for the removal of all structures on the property. The EPA may remove tanks, drums, or any other structures or materials which contain hazardous substances.
- g) The Estate will not agree to a five year unilateral renewal period for the agreement. A one year right of renewal is more appropriate.

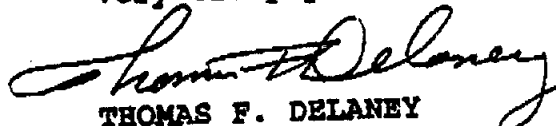
The Rogers Estate will grant EPA free and unimpeded access to the area of the property containing the National Wood Preservers site, without interference, for all testing and remediation purposes and is willing to cooperate with EPA in any reasonable manner, and will enter into an Order granting such privileges. However, the Order as presently drafted is not satisfactory.

AR000071

Mr. Joseph J. C. Donovan
September 23, 1993
Page 3

Should you have any questions or wish to discuss any of these points, please do not hesitate to contact me.

Very truly yours,



THOMAS F. DELANEY

TFD/tmc

Enclosure

CC: Mary Rugala, Esquire
Mr. Clifford Rogers, Jr.
Mellon Bank, N.A.

AR000072